

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

B E T W E E N:

CENTURION MORTGAGE CAPITAL CORPORATION

Plaintiff

and

**10268054 CANADA CORP., DREAM MAKER DEVELOPMENTS INC. AND
TEMITOPE OLOWOLAFE a.k.a. ISAAC OLOWOLAFE**

Defendants

**FURTHER SUPPLEMENTARY MOTION RECORD OF THE RECEIVER,
BDO CANADA LIMITED**

June 15, 2021

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Second Mortgagee, 1931382 Ontario Inc.

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TAB 1

Court File No.: CV-20-00652174-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

B E T W E E N:

CENTURION MORTGAGE CAPITAL CORPORATION

Plaintiff

and

**10268054 CANADA CORP., DREAM MAKER DEVELOPMENTS INC. AND
TEMITOPE OLOWOLAFE a.k.a. ISAAC OLOWOLAFE**

Defendants

NOTICE OF RETURN OF MOTION

BDO Canada Limited ("**BDO**"), in its capacity as the Court-appointed receiver and manager (the "**Receiver**") of the assets, undertakings and properties of 10268054 Canada Corp. ("**102co**") will make a motion, originally returnable on June 8, 2021, to a judge presiding over the Ontario Superior Court of Justice (Commercial List) (the "**Court**") on June 25, 2021 at 9:30 a.m., or as soon after that time as the motion can be heard.

PROPOSED METHOD OF HEARING: The motion is to be heard by videoconference as a result of the Covid-19 pandemic. Please refer to the videoconference details attached at Schedule "A" in order to attend the motion and advise if you intend to attend the motion by emailing Joey Jamil at jjamil@robapp.com.

THE MOTION IS FOR:

1. An Order, substantially in the form attached hereto as Tab 3 of the Further Supplementary Motion Record, for the following relief:

- (a) if necessary, the abridgement of the time for service of the Notice of Return of

Motion and Further Supplementary Motion Record herein and dispensing of service thereof;

- (b) the approval of the proposed distributions as set out in paragraphs 44-54 of the Receiver's Second Report (the "**Proposed Distributions**"), and read in conjunction with the Receiver's Supplemental Report dated June 10, 2021 (the "**Supplementary Report**"); and
- (c) such further and other relief as required in the circumstances and this Honorable Court deems just.

THE GROUNDS FOR THE MOTION ARE:

1. Pursuant to the terms of the Order of Justice Dietrich dated January 14, 2021 (the "**Receivership Order**"), BDO was appointed as Receiver over the assets, undertakings and properties of 102co pursuant to section 243 of the *Bankruptcy and Insolvency Act* ("**BIA**") and section 101 of the *Courts of Justice Act* ("**CJA**").
2. 102co is a corporation incorporated pursuant to the laws of Canada with a registered office in Toronto. 102co is a residential condominium developer that intended to develop a 42-unit condominium building (the "**Project**") located at the address municipally known as 135 Mandrake Street, Ajax, Ontario (the "**Property**"). 102co is the owner of the Property.
3. Pursuant to the Receivership Order, the Receiver was authorized and directed to market and sell the Property in accordance with an approved sales process, including advertising and soliciting offers in respect of the Property and negotiating terms and conditions of sale as the Receiver determined to be appropriate.

The Sale Approval Order and The Disclaimer Order

4. On June 8, 2021, the Receiver brought a motion for an Order for:

- (a) the approval of the sale transaction between the Receiver and 12931109 Canada Inc. (the "**Purchaser**") made as of May 17, 2021 (the "**Sale Agreement**"), in respect of the sale of the Purchased Assets (as defined in the Sale Agreement) (the "**Transaction**");
 - (b) vesting in the Purchaser, 102co's right, title and interest in and to the Purchased Assets;
 - (c) the approval of the Receiver's activities described in the Second Report of the Receiver dated May 31, 2021 (the "**Receiver's Second Report**");
 - (d) sealing the confidential appendices to the Receiver's Second Report (the "**Confidential Appendices**");
 - (e) the approval of the Receiver's disclaimer of agreements of purchase and sale of the unit purchasers of the Project as described in the Receiver's Second Report;
 - (f) the approval of the protocol for the return of deposits (the "**Deposit Protocol**") in respect of the agreements of purchase and sale of Unit Purchasers;
 - (g) the approval of the Receiver's Interim Receipts and Disbursements;
 - (h) the approval of the Receiver's fees and disbursements and those of its counsel as set forth in the Receiver's Second Report; and
 - (i) the approval of the proposed distributions as set out in paragraphs 44-54 of the Receiver's Second Report (the "**Proposed Distributions**").
5. Pursuant to the Order of Justice Dunphy dated June 8, 2021, this Court approved the Sale Agreement and Transaction and vested in the Purchaser 102co's right, title and interest in and to the Purchased Assets ("**Sale Approval Order**").
6. Further, pursuant to a separate Order of Justice Dunphy dated June 8, 2021, this Court granted the following relief (the "**Ancillary Order**"):
- (a) sealing the Confidential Appendices until the time prescribed in the Court Order;
 - (b) disclaiming all agreements of purchase and sale entered into by 102co in respect of the Project;

- (c) approving the Deposit Protocol;
 - (d) approving the Receiver's Interim Receipts and Disbursements;
 - (e) approving the Receiver's fees and disbursements and those of its counsel, subject to an application made in respect of the fees and disbursements of the Receiver and its legal counsel pursuant to section 248(2) of the BIA.
7. Pursuant to paragraph 4 of the Ancillary Order, the relief sought in respect of approval of the Proposed Distributions was adjourned to a date fixed by the Court.

The Proposed Distribution

8. The Receiver's independent counsel has provided to the Receiver a security opinion regarding the security of Centurion as against 102co. The Receiver's counsel is of the view that, subject to certain standard assumptions and qualifications, Centurion's security is valid and enforceable in accordance with its terms as against the Property.
9. Based on the Receiver's review, 102co's indebtedness to Centurion exceeds the cash component of purchase price for the Transaction. After repayment of the Receiver's borrowings and payment of the Receiver's fees and expenses to date plus a reserve for the Receiver's anticipated fees and expenses to complete the administration of the receivership (collectively, the "**Priority Payments**"), there will be insufficient funds to fully repay Centurion or to make any future distributions in respect of the subsequent mortgages registered against the Property.
10. Accordingly, the Receiver recommends that the Court authorize the Receiver to make the Proposed Distributions.

Other Grounds

11. Rules 1.04, 2.03, 3.02 and 37 of the *Rules of Civil Procedure*.
12. Such further and other grounds as the lawyers may advise.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

- (a) The Supplementary Report;
- (b) The Receiver's Second Report (filed);
- (c) Such further and other evidence as the lawyers may advise and this Honourable Court may permit.

June 15, 2021

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Second Mortgagee, 1931382 Ontario Inc.

SCHEDULE "A" – VIDEOCONFERENCE DETAILS

Topic: Centurion Mortgage Capital Corporation v. 10268054 Canada Corp. et al. - Court File No.: CV-20-00652174-00CL - Videoconference before Justice Dunphy

Time: Jun 25, 2021 09:30 AM Eastern Time (US and Canada)

Join Zoom Meeting

<https://us02web.zoom.us/j/83569849589?pwd=dnp0eE00YmIyNGdOWmpvc1JoSzZMdz09>

Meeting ID: 835 6984 9589

Passcode: 674068

One tap mobile

+15873281099,,83569849589#,,,,*674068# Canada

+16473744685,,83569849589#,,,,*674068# Canada

Dial by your location

+1 587 328 1099 Canada

+1 647 374 4685 Canada

+1 647 558 0588 Canada

+1 778 907 2071 Canada

+1 438 809 7799 Canada

Meeting ID: 835 6984 9589

Passcode: 674068

Find your local number: <https://us02web.zoom.us/j/83569849589?pwd=dnp0eE00YmIyNGdOWmpvc1JoSzZMdz09>

**CENTURION MORTGAGE - and-
CAPITAL CORPORATION**

10268054 CANADA CORP. ET AL

Plaintiff

Defendants

Court FileNo.:CV-20-006521714-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

PROCEEDING COMMENCED AT TORONTO

NOTICE OF RETURN MOTION

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Lawyers for the Receiver, BDO Canada Limited

TAB 2

Court File No. CV-20-00652174-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

B E T W E E N:

CENTURION MORTGAGE CAPITAL CORPORATION

Applicant

- and -

**10268054 CANADA CORP., DREAM MAKER DEVELOPMENTS INC. AND
TEMITOPE OLOWOLAFE a.k.a. ISAAC OLOWOLAFE**

Respondent

SUPPLEMENT TO THE SECOND REPORT OF BDO CANADA LIMITED, IN ITS CAPACITY

AS COURT APPOINTED RECEIVER

June 10, 2021

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Security Opinion - Rose, Persiko, Rakowsky, Melvin LLP	C
Email correspondence from Counsel to KAPP Infrastructure Inc.	D

INTRODUCTION AND PURPOSE OF THIS REPORT

1. This Supplemental Report and appendices are to be read in conjunction with the Second Report to Court dated May 31, 2021.
2. The purpose of this Supplemental Report dated June 10, 2021 (the “**Supplementary Report**”) is to provide additional information to the Court to support the Receiver’s recommendation to make an interim distribution to Centurion. The Receiver previously requested that this interim distribution be approved at the motion heard June 8, 2021 (the “**Sale Approval Motion**”). This part of the Sale Approval Motion was adjourned to a date to be fixed by the Court pursuant to paragraph 4 of the Order of Justice Dunphy dated June 8, 2021 (the “**June 8 Administrative Order**”). A copy of the June 8 Administrative Order is attached as **Appendix “A”**. A copy of the Endorsement of Justice Dunphy from the Sale Approval Motion is attached as **Appendix “B”**.

DISTRIBUTION OF NET SALE PROCEEDS

3. As set out in paragraphs 44 through 54 of the Second Report, the Receiver requested approval of an interim distribution to Centurion as the senior secured lender. The Receiver’s recommendation on the distribution was based upon the security opinion prepared by Rose, Persiko, Rakowsky, Melvin LLP. The security opinion is attached hereto as **Appendix “C”**.

PRIORITY CLAIM PREVIOUSLY ASSERTED BY KAPP INFRASTRUCTURE INC.

4. Prior to the Sale Approval Motion, the Receiver was notified by counsel for KAPP Infrastructure Inc. (“**KAPP**”) that KAPP was asserting a priority claim to the sale proceeds over Centurion pursuant to sections 7, 8 and 9 of the *Construction Act*. Counsel for KAPP has since advised that this priority claim has been withdrawn. Attached hereto as **Appendix “D”** is correspondence from counsel to KAPP indicating same.

BDO CANADA LIMITED,
in its capacity as the Court-appointed Receiver of
10268054 Canada Corp, and not in its personal or corporate capacity

Per:



Name: Josie Parisi, CA, CPA, CBV, CIRP, LIT
Title: Senior Vice-President

APPENDIX A

Court File No.: CV-20-00652174-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

THE HONOURABLE MR.	)	TUESDAY, THE 8th
)	
JUSTICE DUNPHY	)	DAY OF JUNE, 2021

BETWEEN:

CENTURION MORTGAGE CAPITAL CORPORATION

Plaintiff

and

**10268054 CANADA CORP., DREAM MAKER DEVELOPMENTS INC. AND
TEMITOPE OLOWOLAFE a.k.a. ISAAC OLOWOLAFE**

Defendants

ORDER

(Disclaiming Purchase Agreements and Administrative Matters)

THIS MOTION made by BDO Canada Limited ("**BDO**"), in its capacity as the Court-appointed receiver and manager (the "**Receiver**") of 10268054 Canada Corp. ("**102co**") for the relief set out in the Notice of Motion dated May 31, 2021, including the approval of the sale transaction (the "**Transaction**") contemplated by an Asset Purchase Agreement between the Receiver in its capacity as Receiver of 102co and 12931109 Canada Inc. (the "**Purchaser**") made as of May 17, 2021 (the "**Sale Agreement**"), vesting in the Purchaser 102co's (the "**Debtor**") right, title, benefit and interest in the assets described in the Sale Agreement (the "**Purchased Assets**") and approving the disclaimer of all agreements of purchase and sale entered into by 102co in respect of the condominium development that was to be constructed at the property municipally



known as 135 Mandrake Street, Ajax, Ontario (the “**Project**”) was heard this day by videoconference as a result of the Covid-19 pandemic.

ON READING the Motion Record of the Receiver and the Second Report of the Receiver dated May 31, 2021 (the "**Receiver’s Second Report**"), the Affidavit of Irving Marks sworn May 28, 2021 (the “**Robins Fee Affidavit**”) and the Affidavit of Josie Parisi sworn May 31, 2021 (the “**BDO Fee Affidavit**”) and on hearing the submissions of counsel for the Receiver and any such other counsel or individual as were present, no one appearing for any other person on the service list, although properly served as evidenced by the Affidavits of Wendy Lee sworn June 1 and June 4, 2021, filed.

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service hereof.

PURCHASE AGREEMENTS

2. **THIS COURT ORDERS** that upon completion and closing of the Transaction, the Receiver’s disclaimer of all agreements of purchase and sale entered into by 102co in respect of the Project be and is hereby approved.

3. **THIS COURT ORDERS** that the Deposit Protocol in respect of the return of deposits to purchasers of units in the Project attached hereto as Schedule “A” is hereby approved.

DISTRIBUTIONS

4. **THIS COURT ORDERS** that the motion as it relates to the proposed distributions sought

in paragraph 2(g) of the Notice of Motion of the Receiver dated May 31, 2021 is hereby adjourned to a date to be fixed by the Court.

SEALING

5. **THIS COURT ORDERS** that the Confidential Appendices to the Receiver's Second Report are hereby sealed until the earlier of:

- (a) the closing of the Transaction;
- (b) July 30, 2021; or
- (c) upon further order of the Court.

APPROVAL OF ACTIVITIES

6. **THIS COURT ORDERS** that the Interim Receipts and Disbursements of the Receiver as described in the Receiver's Second Report are hereby approved.

APPROVAL OF RECEIVER' FEES AND EXPENSES

7. **THIS COURT ORDERS** that the fees and disbursements of the Receiver and its legal counsel as described in the Receiver's Second Report, the BDO Fee Affidavit and the Robins Fee Affidavit are hereby approved, subject to an application made in respect of the fees and disbursements of the Receiver and its legal counsel pursuant to section 248(2) of the *Bankruptcy and Insolvency Act* (R.S.C., 1985, c. B-3) .



SCHEDULE "A"**Deposit Refund Protocol****10268054 Canada Corp.**

- 1) Miller Thomson LLP ("**MT LLP**") will in a reasonable time frame provide to Tarion Warranty Corporation ("**Tarion**"), the Statutory Declaration in the form attached as Schedule "A" hereto in respect of the deposits ("**Deposits**") of purchasers of units ("**Purchasers**") in the project that was to have been constructed at 135 Mandrake Street, Ajax, Ontario (the "**Project**").
- 2) BDO Canada Limited in its capacity as receiver of 10268054 Canada Corp. (the "**Receiver**") will provide to Tarion the Statutory Declaration in the form attached as Schedule "B" hereto in respect of the Project.
- 3) The Receiver will request that the principal (the "**Principal**") of 10268054 Canada Corp. provide to Tarion the Statutory Declaration in the form attached as Schedule "C" hereto. Failure by the Principal to provide such Statutory Declaration will not prevent the refund of the Deposits to the Purchasers.
- 4) MT LLP will send an email or letter to the Purchasers in the Project for which Deposits have not been refunded as at the date hereof notifying them that they may obtain a refund of their Deposits and the instructions for them to do so. These instructions will include requirements that Purchasers execute a Release and Termination Agreement, provide Photo Identification, a mailing address and a Receipt. A copy of such email or letter will be provided to Tarion, the Receiver and Westmount Guarantee Services Inc. on behalf of Aviva Insurance Company of Canada ("**Westmount**"). Any Purchasers who refuse to execute and return a Release and Termination Agreement, will be requested to at least execute and return a Written Acknowledgment Confirming the Amount of Monies Refunded and Termination of the Purchase Transaction prior to the refund of Deposits to the Purchasers. Failure by Purchasers to comply with either of the above requirements/requests will not prevent the refund of Deposits to the Purchasers; provided, that MT LLP sends the Purchaser's Deposit Monies by registered mail to the Purchaser named in the Purchase Agreement, and provides confirmation of same to Tarion, Westmount and the Receiver.
- 5) Purchasers will be asked to comply with the instructions referred to in paragraph 4 above, including returning their executed Release and Termination Agreement or a Written Acknowledgment Confirming the Amount of Monies Refunded and Termination of the Purchase Transaction, along with Photo Identification to MT LLP, which items MT LLP will forward to Westmount, if received.

- 6) From time to time, MT LLP will assemble the documents listed below (if available) in a single binder organized by unit number for each of the Deposits refunded after the date hereof at such time ("**Closing Binders**"):
- Executed Release and Termination Agreements, if obtained
 - A Copy of the First Page of the Unit Agreement of Purchase and Sale ("**APS**")
 - A Copy of any Assignment of the APS by the Purchaser
 - Copies of any Form 4
 - Written Acknowledgment executed by Purchaser Confirming the Amount of Monies Refunded and Termination of the Purchase Transaction, if obtained
 - An Updated Summary of the Deposits Released and Remaining

Closing Binders shall be delivered electronically to Tarion, the Receiver and Westmount.

- 7) After Tarion receives the most recent Closing Binder, Tarion will within ten business days of receipt, confirm by email to Westmount that the documentation is complete such that Tarion's liability to the relevant Purchaser(s) for claims in respect of their respective Deposits will be extinguished once MT LLP releases the Deposit to the Purchaser. "Deposit" means any amount that would be a valid deposit claim under the Ontario New Home Warranties Plan Act.
- 8) After Westmount receives the email from Tarion referred to in the paragraph above, MT LLP will then advise Purchasers that their deposit refund cheques (including the funds relating to the applicable Deposit) made out to the Purchaser(s) named in the APS or any permitted assignee or designee so designated in writing will be mailed to the address provided by the Purchasers or permitted assignee or permitted designee. Cheques will be made out to the name of (i) the Purchaser(s) shown on the APS; (ii) a permitted assignee(s); or (iii) a permitted designee(s).
- 9) Upon release of Deposits, MT LLP will provide in a reasonable time frame to Tarion a Statutory Declaration in the form attached as Schedule "A" in respect of such refunded deposits.
- 10) From time-to-time, and upon being satisfied that its liability to the relevant Purchasers for claims in respect of their respective Deposits has been extinguished, Tarion will provide confirmation to Westmount that the surety bond provided in respect of the Project (the "Tarion Bond") is reduced by the relevant amount on a unit-by-unit basis.
- 11) MT LLP will every month, provide Tarion, the Receiver and Westmount with a ledger of: (i) deposits paid to MT LLP (including Deposits released); and (ii) deposits paid to MT LLP (including Deposits) not released.

- 12) Once all Deposits have been returned to Purchasers and upon being satisfied that its liability to the relevant Purchasers for claims in respect of their respective Deposits has been extinguished, Tarion will correspondingly reduce the amount of the Tarion Bond; provided, however, that Tarion shall at all times be entitled to retain a sufficient portion of the Tarion Bond to cover Tarion's liabilities in respect of amounts secured by the Tarion Bond that have not been extinguished at the time of any reduction. Upon being satisfied that its liability in respect of amounts secured by the Tarion Bond has been extinguished, Tarion will return the Tarion Bond to Westmount for cancellation.

Schedule "A"

STATUTORY DECLARATION

CANADA) IN THE MATTER OF the proposed development
) (the "Project") by 10268054 Canada Corp. (the
) "Vendor") situated in the Town of Ajax on those
PROVINCE OF ONTARIO) lands and premises owned by the Vendor located at
) 135 Mandrake Street, Ajax, Ontario
))
TO WIT:)

I, _____, of the City of _____, DO SOLEMNLY DECLARE THAT:

1. Miller Thomson LLP is the escrow agent for the Vendor and Westmount Guarantee Services Inc. pursuant to a Deposit Trust Agreement.
2. I _____, am a partner of Miller Thomson LLP, and as such have knowledge of the matters declared herein.
3. All deposits paid to Miller Thomson LLP under agreements of purchase and sale in respect of the Project units numbered _____, _____ and _____ have been refunded to the respective purchasers of such units or their permitted assignees or permitted designees by Miller Thomson LLP.

AND I MAKE THIS solemn declaration conscientiously believing it to be true and knowing it is of the same force and effect as if made under oath.

DECLARED BEFORE ME by Video Conference by _____ of the City of _____, at the City of _____, of the Province of Ontario, on the _____ day May, 2021 in accordance with O.Reg.431/20, Administering Oath or Declaration Remotely.

A Commissioner etc.

Name:
Title:

Schedule "B"

STATUTORY DECLARATION

CANADA	)	IN THE MATTER OF the proposed development
	)	(the “ Project ”) by 10268054 Canada Corp. (the
	)	“Vendor ”) situated in the Town of Ajax on those
PROVINCE OF ONTARIO	)	lands and premises owned by the Vendor located at
	)	135 Mandrake Street, Ajax, Ontario
)	
TO WIT:)	

I, _____, of the City of _____, DO SOLEMNLY DECLARE THAT:

1. I am a _____ of BDO Canada Limited, the receiver appointed in respect of the Vendor.
2. The Vendor is not proceeding with the Project that the Vendor had proposed to construct on the lands and premises described above.
3. To the best of my knowledge and belief (which is based on information provided by the Vendor): (i) the Vendor entered into ■ (■) agreements of purchase and sale with respect to units in the Project (collectively, the "Condominium Sales Agreements"); (ii) aside from the Condominium Sales Agreements, no other agreements of purchase and sale have been entered into in respect of the Project or the lands and premises described above; and (iii) nothing has come to my attention that would suggest that sales of units in the Project were agreed to other than pursuant to the Condominium Sales Agreements.

AND I MAKE THIS solemn declaration conscientiously believing it to be true and knowing it is of the same force and effect as if made under oath.

DECLARED BEFORE ME by Video Conference by _____ of the City of _____, at the City of _____, of the Province of Ontario, on the _____ day May, 2021 in accordance with O.Reg.431/20, Administering Oath or Declaration Remotely.

A Commissioner etc.

Name:
Title:

STATUTORY DECLARATION

CANADA	)	IN THE MATTER OF the proposed development
	)	(the “ Project ”) by 10268054 Canada Corp. (the
	)	“Vendor ”) situated in the Town of Ajax on those
PROVINCE OF ONTARIO	)	lands and premises owned by the Vendor located at
	)	135 Mandrake Street, Ajax, Ontario
)	
TO WIT:)	

I, _____, of the City of _____, DO SOLEMNLY DECLARE THAT:

1. I am _____ of the Vendor, and as such have knowledge of the matters hereinafter declared.
2. The Vendor is not proceedings with the Project that the Vendor had proposed to construct on the lands and premises described above.
3. The Vendor provided all deposits that it received in respect of the sale of units in the project to Miller Thomson LLP, the escrow agent for the Vendor.
4. The Vendor entered into only ■(■) agreements of purchase and sale with respect to units in the Project and did not enter into any other agreements of purchase and sale for units in the Project.

AND I MAKE THIS solemn declaration conscientiously believing it to be true and knowing it is of the same force and effect as if made under oath.

DECLARED BEFORE ME by Video Conference by _____ of the City of _____, at the City of _____, of the Province of Ontario, on the _____ day May, 2021 in accordance with O.Reg.431/20, Administering Oath or Declaration Remotely.

A Commissioner etc.

Name:
Title:

**CENTURION MORTGAGE - and-
CAPITAL CORPORATION**

10268054 CANADA CORP. ET AL

Plaintiff

Defendants

Court FileNo.:CV-20-006521714-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

PROCEEDING COMMENCED AT **TORONTO**

**ORDER
(Disclaiming Purchase Agreements and
Administrative Matters)**

ROBINS APPLEBY LLP

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2600 - 120 Adelaide Street West
Toronto ON M5H 1T1

Dominique Michaud LSO No.: 56871V

Email: dmichaud@robapp.com
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Joseph Jamil LSO No.: 74614L

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Lawyers for the Receiver, BDO Canada Limited

APPENDIX B

From: Dunphy, Mr. Justice Sean (SCJ) <Sean.Dunphy@scj-csj.ca>
Sent: Wednesday, June 09, 2021 9:16 AM
To: Dominique Michaud; Joey Jamil
Cc: Ng, Daisy (JUD); JUS-G-MAG-CSD-Toronto-SCJ Commercial List
Subject: #2 Centurion Mortgage Capital Corp. 10:00am CV-20-652174-00CL
Attachments: Final Draft Order -Approval and Vesting Order.pdf; Final Draft Order- Disclaiming of Purchase Agreements and Administrative matters.pdf

CAUTION: External e-mail.

Style of Cause:

Court File No.: CV-20-00652174-00CL ONTARIO SUPERIOR COURT OF JUSTICE (COMMERCIAL LIST) BETWEEN: CENTURION MORTGAGE CAPITAL CORPORATION Plaintiff and 10268054 CANADA CORP ., DREAM MAKER DEVELOPMENTS INC. AND TEMITOPE OLOWOLAFE a.k.a. ISAAC OLOWOLAFE Defendants

Counsel:

ROBINS APPLEBY LLP Barristers+ Solicitors 2600 - 120 Adelaide Street West Toronto ON MSH ITI Dominique Michaud LSO No.: 56871V Email: dmichaud@robapp.com Tel: (416) 360-3795 Joseph Jamil LSO No.: 74614L. Email: jjamil@robapp.com Tel: (416) 360-3783 Fax: (416) 868-0306 Lawyers for the Receiver, BDO Canada Limited

Date: June 8, 2021

Endorsement:

I have approved and signed the draft approval and vesting order in the form submitted. I am satisfied that the Receiver has followed the orders previously made in conducting the sale and has conducted the sale in a commercially reasonable manner. The offer selected by the Receiver – with the approval of the petitioning creditor Centurion – has an unusual feature in that it has the equivalent of a vendor take-back mortgage feature. Centurion has approved that feature and I have considered the offer in the context of all other offers received and the entire process and concur with the Receiver’s recommendation.

There is approximately \$100,000 in deposits currently being held on behalf of six prospective purchasers of condominium units in the project. The project not having proceeded to the phase of actually registering a condominium plan, they will receive the return of their money. I have approved the disclaimer of those agreements – a belts and suspenders precaution more than anything else given the status of the project – and I have also approved the protocol worked out with Tarion to ensure the return of those deposits.

As I have often noted, I do **not** sign orders containing blank approvals of all matters in a receiver’s report. I am approving the matters that come forward for approval and am not in a position to conduct forensic audits of every receiver’s report in the abstract. As and when issues arise, judges are there to resolve them. There are other ways of dealing with parties who wait in the weeds and sit on their rights.

I have adjourned the request to authorize a distribution to the first mortgagee. The receiver’s report contains a summary of the security opinion but no court has passed on the priority of that security and I cannot approve it based on a derivative description of an opinion only. That aspect of the relief claimed will be adjourned to be dealt with by me prior to closing via a supplementary motion record and a notice of return of motion. It is my understanding that there may be a trust claim to some of the proceeds in a relatively minor amount (relative to the sale price). The receiver will report on that issue and how it proposes to deal with it at the return of the distribution portion of this motion. Orders signed and attached hereto.

Justice Sean F. Dunphy

Superior Court of Justice
361 University Avenue
Toronto, ON
M5G 1T3

APPENDIX C

ROSE, PERSIKO, RAKOWSKY, MELVIN LLP
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 M5H 2Y2

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May 27, 2021
 File No.: 20210255

BY EMAIL

BDO Canada Limited
 20 Wellington Street East, Suite 500
 Toronto, ON M53 1CS

Attention: Josie Parisi

RE: Security Opinion for BDO Canada Limited as Court appointed Receiver (the "**Receiver**") with respect to Centurion Mortgage Capital Corporation (the "**Lender**") loan (the "**Loan**") to 10268054 Canada Corp. (the "**Debtor**") upon the security of all property and assets comprising of the property municipally known as 184-188 Salem Road, Ajax, Ontario, formerly known as 135 Mandrake Street, Ajax, Ontario (the "**Property**" or "**Project**")

You requested that we review and provide you with our opinion as to the validity and enforceability of a certain charge and the perfection of certain security interest granted by the Debtor in favour of the Lender. We have examined originals or copies identified to our satisfaction, of the following documents (collectively, the "**Loan Documents**"):

1. The Loan Agreement entered into between the Lender and the Debtor, dated October 15, 2018, with respect to financing the Project, (the "**Loan Agreement**").
2. The Charge/Mortgage registered on December 21, 2018 as Instrument Number DR1762699 in support of charging the Property in favour of the Lender with respect to the Loan, (the "**Mortgage**");
3. The Assignment of Rents entered into between the Lender and the Debtor, dated November 19, 2018, in support the Assignee granting all its right, title and interest in and to the Project to the Lender as additional security for payment secured by the Mortgage; and supporting Notice of Assignment of Rents General registered on December 21, 2018 as Instrument number DR1762700 relating to the Property in favour of the Lender, (the "**Assignment of Rents**");
4. The General Security Agreement in favour of the Lender as a security interest in all of the personal property of the Debtor as additional security for payment secured by the Mortgage, dated November 19, 2018, (the "**GSA**");
5. The Guarantee and Postponement of Claim granted by the Dream Maker Developments Inc. and Temitope Olowolafe, (collectively, the "**Guarantors**") in favour of the Lender in support of the Mortgage, dated November 29, 2018.

6. The Assignment Agreement between the Lender and the Debtor, dated November 19, 2018, with respect to assignment of the Assignor's right, benefit, title and interest in, to and under all material agreements relating to the construction thereon of 42 stacked townhouse units, approximately 39,084 square feet of net saleable area and 49 above grade parking spaces and any part or parts thereof.
7. The Assignment of Agreement of Purchase and Sale entered into between the Lender and the Debtor, dated November 19, 2018, as security for payment of the Loan owed to the Lender and performance of the Debtor's obligations pursuant to the Loan Agreement.
8. The Assignment of Insurance granted by the Debtor in support of assigning to the Lender all present and future policy or policies insuring all real and/or personal property situate in, on or under or arising out of or from the Property as additional security for payment of the Loan owed to the Lender, dated November 29, 2018.
9. The Assignment and Pledge of Securities granted by the Debtor in support of assigning to the Lender certain securities described therein, as continuing collateral and additional security for payment of the Loan owed to the Lender, dated November 29, 2018.
10. Environmental Indemnity executed and delivered by the Debtor Entities (as defined below), dated November 29, 2018 (as defined below) in support of indemnifying the Lender against any environmental matter that may arise in connection with the Property.
11. The Construction Lien Act Indemnity executed and delivered by the Debtor Entities, dated November 29, 2018 (as defined below) in support of indemnifying the Lender against any construction liens that had been or may be registered against the Property.
12. The Agreement Respecting Purchaser's Deposits entered into between the Debtor, the Lender and the Debtor's solicitors, Miller Thomson LLP, dated November 19, 2018, pursuant to the terms of which, inter alia, Westmount Guarantee Services Inc., ("**Westmount**") agreed to provide certain excess condominium deposit to the Debtor pursuant to a commitment letter dated November 20, 2018, (the "**ECDI Commitment**").

The documents identified at items 2 through to 9 may hereinafter be collectively referred to as the "**Security**".

The Debtor and the Guarantors may hereinafter be collectively referred to as the "**Debtor Entities**".

In forming the opinions expressed below, we have examined the following:

1. a copy of the abstracts of the real property bearing PIN 26453-0695 was obtained from the Land Registry Office on May 20, 2021 upon which the Mortgage is registered against the Property;
2. search of Writs of Execution (with respect to the jurisdictions of the City of Toronto, Regional Municipality of York and Regional Municipality of Peel) against the Debtor;
3. searches against the Debtor under the PPSA, including the financing statement filed pursuant to the *Personal Property Security Act* (Ontario), ("**PPSA**") as Registration Number 20181221 1408 1590 6485 on December 21, 2018, (the "**GSA Registration**") in support of perfecting the Lender's security interest relating to the GSA;
4. certain litigation searches against the Debtor;
5. a bankruptcy search (Ontario) against the Debtor; and

6. the Loan Documents and such ancillary documentation as we deemed appropriate to give this opinion.

In expressing our opinions, we have therefore assumed, without further independent verification by us:

1. the genuineness of all signatures on, and the authenticity and completeness of the Loan Documents;
2. the completeness, truth, accuracy and currency of the indices and filing systems maintained by the public offices and registries where we have searched or enquired or have caused searches or enquiries to be made and upon the information and advice provided to us by appropriate government, regulatory or other like officials with respect to those matters referred to herein;
3. the accuracy of the description of the collateral contained in the Security;
4. the Debtor as registered and beneficial owner of the Property has rights in the lands charged by the Mortgage and the rents and leases referenced in the Assignment of Rents and that value has been advanced to the Debtor by the Lender;
5. the indebtedness, liabilities and obligations of the Debtor secured by Security were, at all times, legal, valid, binding and enforceable obligations of the Debtor;
6. the Debtor was at the time of authorization, execution and delivery of the Security and is at the date herein, validly constituted and existing under the laws of Ontario, had the corporate power and authority to execute, deliver and perform its obligations under the Security has taken all necessary corporate action to authorize the execution, delivery and the performance of its obligations under the Security and has duly executed and delivered each document related to the Security;
7. the Loan Documents have been unconditionally delivered by the Debtor Entities to the Lender;
8. the Security has not been assigned, released, discharged or otherwise impaired, either in whole or in part;
9. the Debtor Entities are indebted to the Lender and received adequate consideration for the grant of the Security;
 - (a) there are no agreements, judgments, rulings, instruments, facts or understandings affecting or concerning any Security granted or the principal obligations with respect to which each Security has been granted, or statutory or regulatory prohibitions on the execution and delivery of any Security or the security interest granted thereunder by the Debtor which were not apparent from a review of each security and which would or might affect the validity or enforceability thereof;
 - (b) the Lender did not know and did not have any reason to believe at the time of the creation of the charges and security interests in the collateral described in the Security that the Debtor was in contravention of any agreement by which the Debtor or its property or assets were bound, if there were such a contravention;
 - (c) that the execution, delivery and performance of obligations under the Security did and do not constitute a preference, fraudulent, preference, conveyance, fraudulent conveyance, settlement or reviewable transaction under the relevant provisions of the *Bankruptcy and Insolvency Act*, (Canada) and *Fraudulent Conveyances Act* (Ontario), the *Assignment and*

Preferences Act (Ontario) or any other similar legislation;

- (d) "10268054 Canada Corp." was the proper legal name of the Debtor at the time of the execution and delivery of the Security, and that this name has not subsequently been changed;
 - (e) the completeness, truth, accuracy and currency of all statements regarding the Security upon which you are relying, provided to you by the Lender; and
 - (f) that a final report was obtained at the operative time from a law firm in good standing authorized to practice in the Province of Ontario indicating that the Security was valid and enforceable in accordance with their terms and that the Debtor at the execution of the Security was the registered and beneficial owner of the Property.
10. Based and relying upon the foregoing and subject to the qualifications, exceptions and limitations herein expressed, we are of the opinion that:
- (a) under the laws of the Province of Ontario, the Mortgage and ancillary Security documents noted herein constitute legal, valid and binding obligations of the Debtor Entities, enforceable against the Debtor Entities in accordance with the terms thereof;
 - (b) the Security, including but not limited to the Mortgage, the Assignment of Rents and the GSA Registration, creates valid security interest for payment of the Loan owed by the Debtor to the Lender as described therein under the laws of the Province of Ontario;
 - (c) the ECDI Commitment has been secured under the PPSA as Registration Number 20180815 1513 1862 0291 on August 15, 2018. Our searches indicate that this registration in favour of Westmount is in priority to the GSA Registration;
 - (d) registration has been made in all public offices in Ontario where such registration is necessary as provided under the laws of the Province of Ontario and to perfect in Ontario the security interests created by the Security in favour of the Lender;
 - (e) our search of the abstracts for the Property indicates that the Mortgage created a charge, in favour of the Lender, secured against the Property bearing PIN 26453-0695;

Please note that the Mortgage priority is second to the Appellate Court Order registered in favour of the Receiver as Instrument No. DR1969025, effective January 29, 2021. We understand this matter is being handled by yourselves internally;

- (f) With respect to the litigation searches against the debtor pertaining to the City of Toronto and the Regional Municipality of York as of May 20, 201, except the ongoing matter of CENTURION MORTGAGE CAPITAL CORPORATION v. 10268054 CANADA CORP. et al (case no. CV200065217400CL) in the Ontario Superior Court of Justice (Toronto), the search results did not indicate any other outstanding litigation matter;
- (g) With respect to the search under the Bank Act Security (Section 427) as of May 20, 2021, our search did not show any corresponding registrations against the Debtor; and
- (h) Further, we searched executions against the Debtor filed with the Sheriff for the City of Toronto, Regional Municipality of York and Regional Municipality of Peel and found no registrations in that regard as of May 20, 2021.

The opinions set forth herein are also subject to the following qualifications and limitations:


1. The enforceability of the Security and the rights and remedies set out therein or any judgment arising out of or in connection therewith may be limited by applicable bankruptcy, insolvency, winding up, reorganization, arrangement, moratorium or other laws affecting creditors' rights generally.
2. The enforceability of any of the Security and the rights and remedies set out therein may be limited by general principles of equity including and without limitation:
 - (a) the enforceability of each of the Security is subject to the discretion of a court of competent jurisdiction to impose restrictions on the rights of creditors to enforce immediate payment of amounts to be payable on demand;
 - (b) the Lender will be required to give a reasonable time to the Debtor to meet any demand for payment of its obligations before enforcing security granted to the Lender;
 - (c) the ability to recover or claim for certain costs or expenses may be subject to judicial discretion; and
 - (d) the enforceability of the Security is subject to the powers of the court of competent jurisdiction to grant relief from forfeiture, to stay proceedings before it and to stay executions on judgment.
3. A receiver or a receiver and a manager appointed pursuant to the provisions of any of the Security may, for certain purposes, be treated by a court as being the agent of the secured party and not solely the agent of a debtor (and the secured party may not be deemed to be acting as the agent and attorney of the debtor in making such appointment), notwithstanding any agreement to the contrary.
4. Our opinion with respect to the enforceability of the Loan Documents is based upon and subject to the fact that they are generally in the standard forms thereof utilized by the Lender in most of its similar loan transactions, and that the same have been prepared and approved by the Lender's independent legal counsel, and assumes that the Loan Documents are or would be enforceable against debtors generally.
5. We express no opinion as to the right, title or interest of the Debtor in or to any of the assets, undertakings and properties of the Debtor.
6. We express no opinion on whether any secured party may have a perfected purchase money security interest which may exist in respect of any of the assets, undertakings and properties of the Debtor.
7. We express no opinion as to whether a security interest was created in the following property:
 - (a) property consisting of a receivable, license, approval, privilege, franchise, permit, lease or agreement to the extent that the terms of such property or any applicable law prohibit its assignment or require, as a condition of its assignability, a consent, approval or other authorization or registration which has not been made or given;
 - (b) permits, quotas or licenses which are held by or issued to the Debtor;

- (c) federal crown debts; and
 - (d) any real property or interest therein.
8. We express no opinion as to any security interest created by any Loan Documents with respect to property that is transformed in such a way that it is not identifiable or traceable or any proceeds of property that are not identifiable or traceable.
 9. We have made no searches under applicable statutes, including the *Copyright Act* (Canada), the *Patent Act* (Canada) and the *Trade-marks Act* (Canada), to confirm that the Lender has made registrations that may be necessary to perfect its security interests, if any, in intellectual property.
 10. We express no opinion as to the application of the *Securities Act* (Ontario).
 11. We express no opinion as to compliance with the *Personal Information Protection and Electronic Documents Act* (Canada) or any other privacy laws with respect to any provision in the Loan Documents which purport to grant to the Lender or any other person, access to books, correspondence, records or other information of any Debtor Entity.
 12. We are solicitors qualified to carry on the practice of law in the province of Ontario and are not qualified to express any opinion as to the laws or any matter governed by the laws of any jurisdiction other than the province of Ontario and the laws of Canada applicable therein.
 13. This opinion letter is provided for use only in connection with the loan transaction referred to herein, and may not be used or relied upon in connection with any other matter or transaction.

The opinions expressed herein are provided solely for the benefit of the party to whom it was delivered and may not be relied or used by any other person for any reason whatsoever.

Yours very truly,

ROSE, PERSIKO, RAKOWSKY, MELVIN LLP

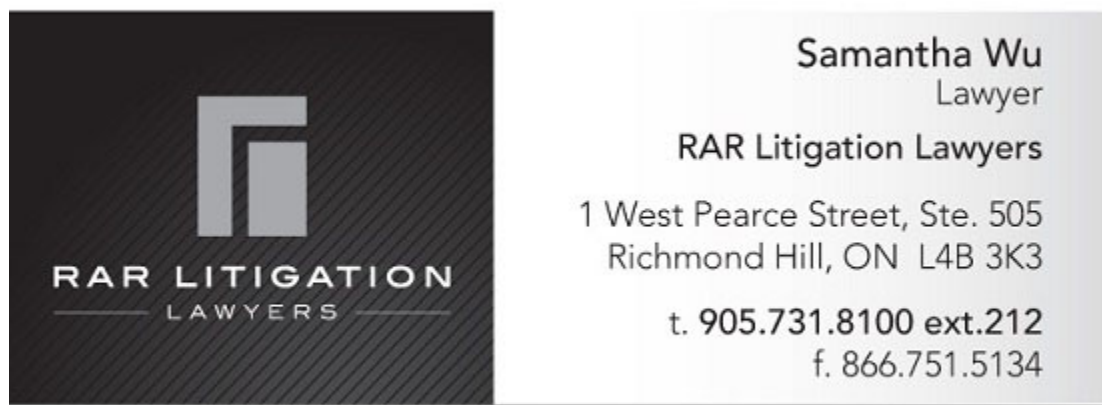
Per: 
Daniel Bank

APPENDIX D

From: Samantha Wu <sam@rarlitigation.com>
Sent: Tuesday, June 08, 2021 10:48 AM
To: Dominique Michaud
Subject: RE: Kapp Infrastructure Claim

CAUTION: External e-mail.

KAPP will not be asserting a claim of priority over Centurion in the distribution of sale proceeds.



This e-mail message (including attachments, if any) is confidential and is intended only for the addressee. Any unauthorized use or disclosure is strictly prohibited. Disclosure of this e-mail to anyone other than the intended addressee does not constitute waiver of privilege. If you have received this communication in error, please notify us immediately and delete this. Thank you for your cooperation.

From: Dominique Michaud <dmichaud@robapp.com>
Sent: June 8, 2021 9:56 AM
To: Samantha Wu <sam@rarlitigation.com>
Subject: Kapp Infrastructure Claim
Importance: High

I understand that you are not participating this morning. Is Kapp still asserting its priority claim? If so, we will address it by way of holdback. We will recommend a \$100k holdback. Please confirm. If you disagree, you should participate on the motion.

Dominique Michaud | [Bio](#)

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ROBINS APPLEBY
BARRISTERS + SOLICITORS

****Please note that Robins Appleby LLP is working remotely due to the COVID-19 pandemic. We continue to be available by email and by phone. Our secure electronic file management system enables us to be fully operational during this time.****

Robins Appleby LLP | 2600-120 Adelaide St.W., Toronto, ON M5H 1T1 | <http://www.robapp.com>

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TAB 3

Court File No.: CV-20-00652174-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

THE HONOURABLE MR.	)	FRIDAY, THE 25th
)	
JUSTICE DUNPHY	)	DAY OF JUNE, 2021

BETWEEN:

CENTURION MORTGAGE CAPITAL CORPORATION

Plaintiff

and

**10268054 CANADA CORP., DREAM MAKER DEVELOPMENTS INC. AND
TEMITOPE OLOWOLAFE a.k.a. ISAAC OLOWOLAFE**

Defendants

**ORDER
(Interim Distribution)**

THIS MOTION made by BDO Canada Limited ("**BDO**"), in its capacity as the Court-appointed receiver and manager (the "**Receiver**") of 10268054 Canada Corp. ("**102co**") for the relief set out in the Notice of Return of Motion dated June 15, 2021, including the approval of the proposed distributions as set out in paragraphs 44-54 of the Receiver's Second Report dated May 31, 2021 (the "**Receiver's Second Report**") and read in conjunction with the Receiver's Supplemental Report dated June 10, 2021 (the "**Supplementary Report**") was heard this day by videoconference as a result of the Covid-19 pandemic.

ON READING the Receiver's Second Report and the Supplementary Report and on hearing the submissions of counsel for the Receiver and any such other counsel or individual as

were present, no one appearing for any other person on the service list, although properly served as evidenced by the Affidavit of Wendy Lee sworn June 15, 2021, filed.

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Return of Motion and the Further Supplementary Motion Record of the Receiver are hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service hereof.

DISTRIBUTIONS

2. **THIS COURT ORDERS** that the Receiver is hereby authorized to make distributions to Centurion Mortgage Capital Corporation in accordance with paragraphs 44-54 of the Receiver's Second Report.

**CENTURION MORTGAGE - and-
CAPITAL CORPORATION**

10268054 CANADA CORP. ET AL

Plaintiff

Defendants

Court FileNo.:CV-20-006521714-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

PROCEEDING COMMENCED AT **TORONTO**

**ORDER
(Interim Distribution)**

ROBINS APPLEBY LLP

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Lawyers for the Receiver, BDO Canada Limited

**CENTURION MORTGAGE - and-
CAPITAL CORPORATION**

10268054 CANADA CORP. ET AL

Plaintiff

Defendants

Court File No.: CV-20-00652174-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

PROCEEDING COMMENCED AT TORONTO

**FURTHER SUPPLEMENTARY MOTION
RECORD OF THE RECEIVER,
BDO CANADA LIMITED**

ROBINS APPLEBY LLP

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